

DOCKET FILE COPY ORIGINAL

ORIGINAL

COLE, RAYWID & BRAVERMAN, L.L.P.

ATTORNEYS AT LAW

1919 PENNSYLVANIA AVENUE, N.W., SUITE 200

WASHINGTON, D.C. 20006-3458

TELEPHONE (202) 659-9750

FAX (202) 452-0067

WWW.CRBLAW.COM

ERIK J. CECIL

DIRECT DIAL

202-828-9848

ECECIL@CRBLAW.COM

LOS ANGELES OFFICE

2381 ROSECRANS AVENUE, SUITE 110

EL SEGUNDO, CALIFORNIA 90245-4290

TELEPHONE (310) 643-7999

FAX (310) 643-7997

RECEIVED

FEB 6 2001

February 6, 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**VIA COURIER**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., SW  
The Portals - Room CY-B402  
Washington, D.C. 20554

**Re: Comments of Global NAPS, Inc. on Application of Verizon New England,  
Inc. for Section 271 Authorization in Massachusetts (CC Docket No. 01-9)**

Dear Ms. Salas:

Enclosed are an original and one copy of the Comments of Global NAPS, Inc. in  
the above-referenced proceeding.

Sincerely,



Erik J. Cecil

Enclosures

cc: Attached Service List

Copies rec'd  
CODE

Before the  
Federal Communications Commission  
Washington, D.C. 20554

RECEIVED

FEB 6 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Comments Requested on the Application  
By Verizon New England Inc.  
For Authorization Under Section 271  
Of The Communications Act  
To Provide In-Region, InterLATA Service In  
The State Of Massachusetts

CC Docket No. 01-9

COMMENTS OF GLOBAL NAPS, INC.

Christopher W. Savage  
Karlyn D. Stanley  
Erik J. Cecil  
**Cole, Raywid & Braverman, LLP**  
1919 Pennsylvania, Ave., N.W.,  
Suite 200  
Washington, DC 20006  
202-659-9750

and

William J. Rooney, Jr.  
Vice President & General Counsel  
**Global NAPs, Inc.**  
89 Access Road  
Norwood, MA 02062  
(617) 507-5111

*On Behalf of Global NAPs, Inc.*

Dated: February 6, 2001

## TABLE OF CONTENTS

<b>Summary.....</b>	<b>i</b>
<b>A. List of Issues .....</b>	<b>1</b>
<b>B. Statutory Requirements. ....</b>	<b>2</b>
<b>C. Verizon Has Failed to Comply with the Checklist Due to its Total Disregard of Interconnection Agreements and Failure to Pay Reciprocal Compensation. ....</b>	<b>3</b>
<b>1. Background. ....</b>	<b>3</b>
<b>2. Interconnection Agreements Require Payment of Reciprocal Compensation on ISP- Bound Traffic. ....</b>	<b>6</b>
<b>3. Verizon’s Refusal to Pay Reciprocal Compensation on ISP Bound Calls Violates the Checklist.....</b>	<b>9</b>
<b>D. Conclusion .....</b>	<b>11</b>

## **SUMMARY**

Section 271 of the Telecommunications Act of 1996 (the “Act”) requires more than signatures on interconnection agreements. Rather, incumbent LECs (“ILECs”) must in good faith abide by the spirit and the letter of the market-opening requirements of the Telecommunications Act of 1996 (the “Act”). Verizon is a multi-billion dollar company built on the foundation of a century of government-sanctioned monopoly and continues to reap the benefits of its substantial market share and enormous economies of scale. Despite these advantages, or maybe because of them, Verizon continues to thwart competition. For example, in Massachusetts Verizon has refused to pay Global NAPs lawful fees for Verizon’s use of Global NAPs’s network pursuant to a negotiated interconnection agreement approved by the Massachusetts Department of Telecommunications and Energy. Nevertheless, Verizon has delayed and litigated this agreement to the point of almost exhausting its economical usefulness.

Competitive carriers can only begin to break Verizon’s utter domination of the Massachusetts local exchange market if Verizon complies with the Act. So far, Verizon has hindered competition by litigating the terms of interconnection agreements rather than complying with them – forcing competitive carriers to invest in legal fees instead of infrastructure. Here, Verizon’s conduct plainly shows it has failed to comply with the Section 271 checklist by violating and continuing to violate the terms of its existing interconnection agreements. The FCC, therefore, should deny Verizon New England Inc.’s Application for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Comments Requested on the Application  
By Verizon New England Inc.  
For Authorization Under Section 271  
Of The Communications Act  
To Provide In-Region, InterLATA Service In  
The State Of Massachusetts

CC Docket No. 01-9

**COMMENTS OF GLOBAL NAPS, INC.**

Global NAPs, Inc. ("Global NAPs") opposes Verizon- Massachusetts ("Verizon") application under 47 U.S.C. §271 for authorization to provide in-region interLATA services upon the grounds that Verizon has failed to comply with the terms of 47 U.S.C. § 271(c)(2)(B), and has otherwise engaged in a pattern of anticompetitive practices that show that its local exchange markets are not fully open to competition. For this reason, the Verizon's Section 271 request for Massachusetts should be denied.

**A. List of Issues**

By this filing, Global NAPs is raising two issues:

1. Has Verizon complied with 47 U.S.C. § 271(c)(2)B(i) which requires: "Interconnection in accordance with the requirements of sections 251(c)(3) and 252(d)(1)"?

2. Has Verizon complied with 47 U.S.C. § 271(c)(2)B(xiii) which requires “Reciprocal Compensation arrangements in accordance with the requirements of section 252(d)(2)”?

**B. Statutory Requirements.**

Section 271(c)(2)(B) sets out the “competitive checklist” which must be met before Verizon may provide in-region interLATA services. Various checklist items refer to particular provisions of Sections 251 and 252 with which Verizon must comply. As the Federal Communications Commission (“FCC”) is aware, a key thrust of Sections 251 and 252 is to require incumbent LECs (“ILECs”) such as Verizon to negotiate interconnection agreements, in good faith, in order to fulfill the obligations imposed on ILEC under Sections 251 and 252.

Global NAPs submits that compliance with the Section 271 checklist cannot be shown by the mere existence of interconnection agreements addressing Sections 251 and 252. To the contrary, compliance with the 271 checklist requires ongoing, good faith efforts by Verizon to comport with the provisions of Verizon’s interconnection agreements. Indeed, if Verizon or other firms subject to Section 271 were permitted to flout their specific obligations in interconnection agreements, the “carrot” of in-region long distance services would serve as a perverse inducement to make expansive promises in interconnection agreements, and then breach those promises as long as the basic requirements of Sections 251 and 252 are met.

Here, Verizon has failed to comply with certain provisions of its Interconnection Agreement with Global NAPs regarding reciprocal compensation and billing disputes. It is Global NAPs’ understanding that Verizon has also failed to comply with similar terms in other CLEC interconnection agreements. Specifically, Verizon has refused and continues to refuse to pay Global

NAPs any reciprocal compensation, notwithstanding its clear obligation to do so in the parties' interconnection agreement. Verizon ceased paying even before the Massachusetts Department of Telecommunications and Energy ("Department") issued its order authorizing such action, in the case of ISP-bound calls.

Verizon is not meeting its interconnection obligations in good faith. To the contrary, Verizon is apparently trying to drive Global NAPs out of business by taking advantage of Global NAPs' substantial investment in switching facilities, used to deliver calls that Verizon's customers make, while paying Global NAPs nothing at all for the costs caused by Verizon's customers when they call Global NAPs customers. It follows that Verizon has failed to meet the 271 checklist.

**C. Verizon Has Failed to Comply with the Checklist Due to its Total Disregard of Interconnection Agreements and Failure to Pay Reciprocal Compensation.**

1. Background.

Global NAPs and Verizon executed an interconnection agreement on April 15, 1997, which provided for the payment of reciprocal compensation for the termination of local traffic. Global NAPs has a number of customers who are ISPs. Verizon paid reciprocal compensation to Global NAPs for calls its end users make to ISPs served by Global NAPs from the inception of Global NAPs' service until March 23, 1999. From that time on, Verizon has refused to pay Global NAPs *anything* for completing *ISP-bound calls and only a small fraction of what is owed on other calls.*

In October 1998, the Department determined that calls from end users to ISPs were subject to reciprocal compensation and issued an Order that required Verizon to pay reciprocal compensation

for calls to ISPs.<sup>1</sup> In February 1999, the FCC issued a ruling holding that, while ISP-bound calls are jurisdictionally interstate, parties may have agreed to treat such calls as local for purposes of compensation.<sup>2</sup> In May 1999, the Department ruled that the FCC's *Declaratory Ruling* invalidated the reasoning upon which the *October 21 Order* was based.<sup>3</sup>

The *May 19 Order* did not decide whether compensation for ISP-bound traffic was required by existing interconnection agreements. To the contrary, it stated that "we do not prejudge any formal renewal or prosecution of the dispute before us last October," where such a renewal might rest "on contractual principles or other legal or equitable considerations," *id.* at 32, and urged the parties to attempt to negotiate a settlement which the Department would be willing to mediate. The question of whether Verizon is complying with its existing interconnection agreements, therefore, remained open.

---

<sup>1</sup> *Complaint of WorldCom Technologies, Inc. (successor-in-interest to MFS Intelenet Service of Massachusetts, Inc.) against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for alleged breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996* (October 21, 1998) ("*October 21 Order*").

<sup>2</sup> See *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, CC Docket Nos. 96-98 and 99-68 (released February 26, 1999) ("*Declaratory Ruling*").

<sup>3</sup> *Complaint of WorldCom Technologies, Inc. (successor-in-interest to MFS Intelenet Service of Massachusetts, Inc.) against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for alleged breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996* (May 19, 1999) ("*May 19<sup>th</sup> Order*"). Global NAPs believes that the Department erred in this regard, and has joined with other parties seeking reconsideration of the *May 19<sup>th</sup> Order*. As described below, Bell Atlantic's conduct under its interconnection agreement with Global NAPs warrants rejection of any Bell Atlantic Section 271 request even if the *May 19<sup>th</sup> Order* is not reconsidered.



The DTE reaffirmed this decision on reconsideration, stating that its decision “was premised on the fact that the FCC’s one-call analysis totally undercut the two-call basis (the express and exclusive basis) of the Department’s previous analysis.” D.T.E. 97-116-D/D.T.E. 99-39 (Feb. 25, 2000) at 18.

The premise of these DTE orders was changed on March 24, 2000, when the FCC Order was reversed for “want of reasoned decision making.” *Bell Atlantic v. FCC*, 206 F.3d 1, 3 (D.C. Cir. 2000). The court of appeals noted that the FCC failed to explain why its end-to-end analysis “is relevant to discerning whether a call to an ISP should fit the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs.” *Id.* at 5. The D.C. Circuit also noted that the local call model fits as calls to ISPs appear to fit the definition of “local” under 47 C.F.R. § 51.701(b)(1). The court of appeals vacated and remanded the FCC’s decision. *Id.* at 9. This is because, among other reasons, the ISP is clearly the “called party” when an end user calls an ISP to establish a connection to the Internet.

The premise upon which the DTE ordered that Bell Atlantic, by this time Verizon, did not have to pay reciprocal compensation on ISP-bound calls was vacated by the D.C. Circuit. CLECs sought to have the order vacated. In D.T.E. 97-116-E (July 11, 2000), the DTE declined to vacate its order.

While there is no formal ruling from the Department on this topic, this Section 271 review provides a forum to consider Verizon’s approach to its interconnection obligations to its competitors.

2. Interconnection Agreements Require Payment of Reciprocal Compensation on ISP-Bound Traffic.

As noted above, Section 271 may be used to address the question of whether Verizon is, in fact, complying with its interconnection agreements by refusing to pay compensation for ISP-bound calls. A brief review of the factors relevant to that determination shows that Verizon is, in fact, breaching its agreements. Global NAPs' duly approved interconnection agreement with then Bell Atlantic states in relevant part:

5.7.1 Reciprocal Compensation only applies to the transport and termination of Local Traffic billable by NYNEX or Global NAPs which a Telephone Exchange Service Customer originates on NYNEX's or Global NAPs's network for termination on the other Party's network except as provided in Section 5.7.6 below.

5.7.2 The Parties shall compensate each other for transport and termination of Local Traffic in an equal and symmetrical manner at the rate provided in the Pricing Schedule.

In other words, consistent with the Act's requirement that carriers arrange to compensate each other for transport and termination of traffic across the other's network, Bell Atlantic agreed to pay Global NAPs and Global NAPs agreed to pay Bell Atlantic "in an equal and symmetrical manner at the rate provided" in the duly approved interconnection agreement. Nevertheless, Bell Atlantic simply refused to pay Global NAPs for traffic Bell Atlantic had directed across Global NAPs' network.

In the *Declaratory Ruling* the FCC identified several factors that support a finding that reference to "local traffic" includes ISP-bound calls. *See Declaratory Ruling* at ¶¶ 24-25. Here:(1) The agreement was negotiated within the context of the FCC's long-standing rules that calls to ISPs be treated as local for purpose of access charges and that ISPs be permitted to purchase intrastate

local exchange lines to obtain connections to the PSTN; (2) At the time of entering into the agreement, Verizon had for years classified the costs associated with getting calls from end users to ISPs as local costs, not interstate costs. *See also Declaratory Ruling* at ¶ 36 (noting current rule that costs of ISP access lines are assigned to the intrastate jurisdiction); (3) ISPs who use Verizon obtain service out of *intrastate* tariffs; (4) The agreements make no provision for separately tracking ISP traffic; (5) Message units apply to ISP-bound calls; and (6) If calls to ISPs are not treated as "local" under the agreements, the CLECs will not be compensated at all for routing Verizon's traffic to the ISP.

In this regard, Verizon understood and accepted the general industry practice of treating ISP-bound calls as local calls for essentially all purposes, despite the FCC's long-standing view that such calls were ultimately jurisdictionally *interstate* in nature. Verizon's most directly relevant statement on this topic was made on May 30, 1996, in its formal "Reply Comments" in the FCC's proceeding to develop rules to implement Sections 251 and 252 of the Telecommunications Act of 1996. Many CLECs and wireless service providers were urging the FCC to require a "bill-and-keep" system in which no reciprocal compensation payments are made at all. One of the grounds advanced by the CLECs was that, without "bill-and-keep," ILECs such as Verizon would have an incentive to try to impose excessive call termination rates during negotiations and arbitrations. Verizon, however, scoffed at these suggestions:

Moreover, the notion that bill and keep is necessary to prevent LECs from demanding too high a rate reflects a fundamental misunderstanding of the market. If these rates are set too high, the result will be that new entrants, who are in a much better position to selectively market their services, *will sign up customers whose calls are*

***predominantly inbound***, such as credit card authorization centers and ***internet access providers***. The LEC would find itself writing large monthly checks to the new entrant.

*Reply Comments of Bell Atlantic*, CC Docket No. 96-98 (filed May 30, 1996).<sup>4</sup> In the *Declaratory Ruling*, the FCC found that the interstate nature of much ISP-bound traffic does not prevent parties from agreeing to treat such traffic as local, and makes clear that its policy of treating such calls as local would, by analogy, support a conclusion that the parties in fact so agreed. In this context, Verizon's own statements show that it fully understood and accepted the general industry practice in this regard, in one case ***in the specific context of reciprocal compensation for ISP-bound calls***. This supports only one conclusion: that the parties to the relevant agreements — including Verizon — intended to treat ISP-bound calls as local.

Another relevant consideration is the fact that the affected agreements make no provision for trying to separately identify ISP-bound calls and exempt them from the traffic subject to reciprocal

---

<sup>4</sup> Bell Atlantic's straightforward recognition that calls to ISPs are treated as local calls as part of longstanding industry practice continued on into 1997 as well. Specifically, Bell amended certain of its so-called "comparably efficient interconnection" ("CEI") plans to accommodate the merger. One such CEI plan related to Bell Atlantic's own Internet access service (now known as "bellatlantic.net"). Bell Atlantic stated that "[u]nder the proposed architecture, Bell Atlantic will contract to use, under its own name, the service of an unaffiliated third-party vendor to provide certain dial-up Internet access functions ... ." *Amendment to Bell Atlantic CEI Plan To Expand Service Following Merger With NYNEX*, CCB Pol 96-09 (filed May 5, 1997) ("*ISP CEI Filing*") at 2. Bell Atlantic then stated:

For dial-up access, the end user will place a ***local call*** to the Bell Atlantic Internet hub site from either a local residence or business line or from an Integrated Services Digital Network ("ISDN") service, as shown in Figure 1. Bell Atlantic's vendor will subscribe to ***local telephone services — either standard business lines or ISDN — to receive the call***.

*ISP CEI Filing* at 3 (emphasis added, footnotes omitted). It appears that, except when Bell Atlantic is trying to squirm out of its contractual obligations, it fully understands that the uniform industry practice

compensation. In light of the fact that ISP-bound calls are dialed just like any other local call, and contain no identifying signaling or other means to separate them from normal local calls, there is no credible basis for Verizon to assert that the parties intended all along to treat ISP-bound calls differently from "plain vanilla" local calls.

As a result, it seems clear that the parties indeed intended ISP-bound calls to be subject to compensation. It follows that Verizon's existing interconnection agreement with Global NAPs (and similar agreements) *do* require compensation for ISP-bound calls, and that Verizon's failure to pay such compensation constitutes a breach of its agreements. Verizon's failure to pay, therefore, constitutes a failure to satisfy Section 271's "competitive checklist."

3. Verizon's Refusal to Pay Reciprocal Compensation on ISP Bound Calls Violates the Checklist.

As explained above, the Section 271 checklist requires more than a signature on a piece of paper, but rather require a good faith attempt to comport with the provisions of an interconnection agreement. Verizon has acknowledged only a small fraction, less than 10%, of the traffic delivered to it by Global NAPs and, consequently, under the present DTE order has paid Global NAPs only a small fraction of the reciprocal compensation due on the presumptively non-ISP bound traffic

---

has been, was, and is to treat calls to ISPs as "local."

Verizon is a multi-billion dollar company with all of the benefits that flow from a century of government-sanctioned monopoly. It can only be challenged one market at a time. Such a challenge is only possible if it plays by the rules of the game, particularly the agreed upon rules embodied in the interconnection agreement. If Verizon does not adhere to those rules, no one can challenge it and it will retain its monopoly in local service.

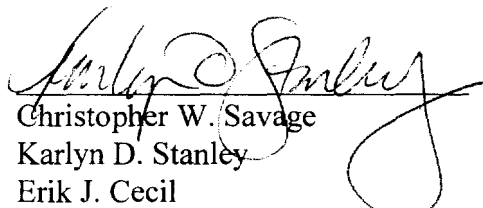
In the market of providing service to ISPs, some CLECs have successfully challenged Verizon. Playing by the rules, CLECs captured more than half of the market. Verizon could have competed fairly by providing more service and better prices. Instead it chose to disregard its contractual obligations to pay for termination of ISP bound traffic, and in the case of Global NAPS, to disregard its contractual obligation to pay for termination of any traffic.

As Global NAPS has described elsewhere, unless some action is taken to remedy this situation, Verizon will, of necessity, regain a monopoly on serving ISPs. Here, Verizon's conduct plainly shows that it has not in fact complied with the requirements of the checklist. The FCC should make clear that Verizon's conduct does not support grant of in-region, interLATA authority.

**D. Conclusion**

Verizon has failed to comply with the Section 271 checklist by violating and continuing to violate the terms of its existing interconnection agreements. The FCC, therefore, should deny Verizon New England Inc.'s Application for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts.

Respectfully submitted,



Christopher W. Savage

Karlyn D. Stanley

Erik J. Cecil

**Cole, Raywid & Braverman, LLP**

1919 Pennsylvania, Ave., N.W., Suite 200

Washington, DC 20006

202-659-9750

and

William J. Rooney, Jr.

Vice President & General Counsel

**Global NAPs, Inc.**

89 Access Road

Norwood, MA 02062

(617) 507-5111

***On Behalf of Global NAPs, Inc.***

Dated: February 6, 2001

## CERTIFICATE OF SERVICE

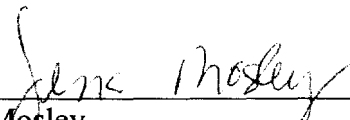
I, Lena Mosley, hereby certify that I have this 6th day of February, 2001, caused to be sent by Courier, a copy of the foregoing Comments of Global NAPs, Inc. on Application of Verizon New England, Inc. to each of the following:

Susan Pie  
Common Carrier Bureau  
445 12<sup>th</sup> Street, SW  
Room 5-C224  
Washington, DC 20554

International Transcription Service (ITS)  
445 12<sup>th</sup> Street, SW  
Room CY-314  
Washington, DC 20554

Josh Walls  
U.S. Department of Justice  
Antitrust Division  
Telecommunications Task Force  
1401 H Street, NW  
Suite 8000  
Washington, DC 20005

Cathy Carpino\*  
Massachusetts Department of Telecommunications  
and Energy  
One South Station  
Boston, MA 02110

  
\_\_\_\_\_  
Lena Mosley

\* Copy sent via Federal Express for overnight delivery.